

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TONY REID



Appeal No. 2006-1887
Application No. 10/725,837
Technology Center 3700

ON BRIEF

Before CRAWFORD, BAHR and HORNER, *Administrative Patent Judges*.
BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1-10.
We AFFIRM.

BACKGROUND

The appellant's invention relates to a multiple sleeve apparatus for applying pressure to a body limb. Independent claims 1 and 5 are illustrative of the invention and read as follows:

1. A system for applying pressure to a body limb, said system comprising:
 - a first sleeve having a foam lining configured to be slid over the limb and to apply an inward pressure onto the limb; and
 - a second sleeve configured to be slid over substantially the entire length of the first sleeve and to apply additional inward pressure along the length of the limb.
5. A system for applying pressure to an arm, said system comprising:
 - an innermost therapeutic pressure sleeve (TPS) having ridges formed over an inner surface and configured to be slid over the entire length of the arm from the shoulder to the wrist and to apply an inward pressure thereon; and
 - at least a second sleeve configured to be slid over substantially the entire length of the TPS to apply additional inward pressure onto the limb.

The examiner relies upon the following as evidence of unpatentability:

Myers	814,795	Mar. 13, 1906
Deasy	5,171,211	Dec. 15, 1992

The appellant seeks review of the examiner's rejection of claims 1-10 as being unpatentable over Deasy in view of Myers. The obviousness-type double patenting rejection set forth in the final rejection (mailed January 5, 2005) has apparently been withdrawn in view of the terminal disclaimer filed August 24, 2005, which has been approved.

Rather than reiterate in their entirety the conflicting viewpoints advanced by the examiner and the appellant regarding this appeal, we make reference to the examiner's answer (mailed October 4, 2005) for the examiner's complete reasoning in support of the rejection and to the appellant's brief (filed August 26, 2005) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art, and to the respective positions articulated by the appellant and the examiner. Having considered all of the evidence and argument before us, we conclude that the examiner's obviousness rejection should be sustained. Our reasons for this conclusion follow.

Deasy discloses an elastic garment, proven very effective in treating edema (col. 2, ll. 56-57), including a pant-like portion 12, a pair of tubular leg portions 14, a coat-like portion 16 and a pair of tubular arm portions 18 (col. 3, ll. 33-37). The tubular arm portions 18 are sized to extend from the wrist of a user up

beyond the elbow joint 48 so as to form an overlap with the sleeves 46 of the coat-like portion 16 (col. 4, ll. 30-34; Fig. 7) and the leg portions 14 are sized such that the upper edge 40 surrounds the user's leg at a location above the knee joint 24 so as to form an overlap with the leg segments 22 of the pant-like portion 12 at the knee joint when both are worn by an individual (col. 4, ll. 5-10,; Fig. 6). Each component part of the garment is made of an elastic material and is sized so as to be compressive on the body of the user and includes an enlarged bead along the edges thereof to actually compress the body more than the remaining portions of the components and in effect act like a garter in compressing the body part of the user immediately beneath the bead (col. 4, ll. 46-53).

In rejecting claims 1-10, the examiner reads the first or innermost sleeve on Deasy's arm portion 18 and the second sleeve on the sleeve 46 of the coat-like portion 16. According to the examiner (answer, pp. 3-4), the sleeve 46 is configured to be slid over *substantially* the entire length of the arm portion 18, as seen in Fig. 7, and to apply additional inward pressure along the length of the limb (citing col. 4, ll. 35-45).

The appellant argues that Deasy shows overlap of the sleeve 46 with the arm portion 18 only at the elbow and thus does not disclose the sleeve 46 configured to be slid over substantially the entire length of the sleeve (brief, p. 4). The examiner contends that Fig. 7 of Deasy clearly shows an overlap not only at the elbow but also above the elbow and below the elbow and that such overlap establishes the sleeve 46 being configured to be slid over *substantially* (i.e., being largely but not

wholly) the entire length of arm portion 18 (answer, p. 6). We agree with the examiner.

The term “substantially” has a plain meaning of “largely” or “approximately” rather than “perfectly,” and is to be interpreted as such “unless something in the prosecution history imposed the ‘clear and unmistakable disclaimer’ needed for narrowing beyond this plain-language interpretation.” *Playtex Products Inc. v. Proctor & Gamble Co.*, 400 F.3d 901, 907, 73 USPQ2d 2010, 2015 (Fed. Cir. 2005). We find no such clear and unmistakable disclaimer in the specification or prosecution history of the present application.

Figs. 1, 2A and 2B of the present application appear to illustrate the inner sleeve 18 and outer thin fabric compression sleeve 40 (or inflatable compression sleeve 50) having the same length, with the outer sleeve being slid over the entire length of the inner sleeve. Fig. 6, in contrast, illustrates a different embodiment of the outer sleeve wherein a shortened sleeve 40a, identical in construction to sleeve 40 but of a shorter length than sleeve 18, can be used with sleeve 18 (present specification, p. 14). The present specification further informs us, at page 14, that “a plurality of sleeves 40a, (which can be of various lengths equal or shorter than sleeve 18), can be applied one over another at various locations on sleeve 18.” There is nothing in the specification of the present application that clearly and unmistakably limits claim 1 or claim 5 to the embodiment illustrated in Figs. 1, 2A and 2B and we have been consistently advised by our reviewing court against

improperly limiting a claim to a particular or preferred embodiment. *See Playtex*, 400 F.3d at 907, 73 USPQ2d at 2015.

As for the prosecution history of the present application, in the remarks accompanying the amendment filed October 28, 2004, in which the language “substantially the entire length of” was added to claims 1 and 5, the appellant pointed out that the intent of appellant’s invention is to apply “a generally uniform pressure” (remarks, pp. 4 and 5) to treat lymphedema, as contrasted with the bands 4 of Myers that are intended to locally compress the limb, not provide uniform pressure over the length of the bandage (remarks, p. 4) and that the amendment to claims 1 and 5 was intended to clarify that distinction over the localized compression application of Myers (remarks, pp. 4 and 5). In light of the above prosecution history, we understand the claim limitation “over substantially the entire length of the first sleeve [TPS]” to require a second or outer sleeve that extends over a significantly larger portion of the length of the inner sleeve than the bands 4 of Myers so as to apply a generally uniform pressure, that is, a pressure distribution that is not as localized as that applied by the bands 4 of Myers.

As illustrated in Fig. 7 of Deasy, the sleeve 46 is slid over or overlaps significantly more than half of the length of the arm portion 18 in a region extending from well above the elbow to well below the elbow of the user, thus applying a generally uniform pressure along the length of the arm portion 18, as contrasted with localized regions of compression as effected by the bands 4 of Myers. The overlap of the sleeve 46 over the arm portion 18 thus satisfies the

“configured to be slid over substantially the entire length of the first sleeve [TPS]”
limitation of claims 1 and 5.

Myers discloses an elastic bandage having a body 1 “made of any suitable material, as rubber or other flexible substance or compounds, that may be rendered plastic in the process of construction” (p. 1, ll. 35-38), the body 1 being provided with a series of irregular inner surfaces 3 or inner raised parts where extra pressure is needed (p. 1, ll. 40-41 and 85-86), and a series of outer encircling bands 4, “which may either be integral or separately applied in order to give greater compression than the bandage alone at any desired point” (p. 1, ll. 42-46). The examiner finds that Myers teaches a system for applying pressure comprising a first innermost therapeutic pressure sleeve (bandage 1) having a foam lining with ridges 3 formed over an inner surface (answer, p. 4) and the appellant does not dispute that finding. The examiner then makes a determination that it would have been obvious to modify Deasy to include foam material for lining the inner surface of the first sleeve (arm portion 18) for the purpose of providing comfortable cushioning for the wearer during use and also “to include a foam lining with ridges formed over an inner surface, as taught and suggested by Myers,” for the purpose of increasing the effectiveness of the compression therapy in the treatment of edema and improving the user’s stamina (answer, p. 4).

The appellant argues that the localized compression function of Myers is far different from and antithetical to both the appellant’s invention and that of Deasy and that, consequently, the combined teachings of the references actually teach

away from the modification proposed by the examiner and that, in any event, there is no suggestion in the references that would have provided any motivation for their combination to arrive at the claimed invention (brief, pp. 4 and 5). We do not agree. While the overlap of the sleeve 46 and arm portion 18 of Deasy is substantial, as discussed above, so as to effect a generally uniform pressure along such overlap region, Deasy also provides enlarged beads along the edges of the sleeve 46 and arm portion 18 to actually compress the body more than the remaining portions of the components and in effect act like a garter in compressing the body part of the user immediately beneath the bead (col. 4, ll. 49-53). Accordingly, the recognition in both Deasy and Myers of the advantages in a body compression system of providing both a base level of generally uniform compression and a level of added compression in localized regions as desired indicates that the systems of Deasy and Myers are more alike and more similar to appellant's invention in both structure and purpose than the appellant would have us believe. The provision of an inner lining having ridges or "a series of irregular inner surfaces" as taught by Myers in the arm portion 18 of Deasy would have been obvious to one of ordinary skill in the art at the time of appellant's invention in order to give greater compression than the arm portion 18 alone at *any* desired point, not just the edges of the arm portion 18 and sleeve 46 where enlarged beads are provided.

In light of the above, the argument in appellant's brief fails to persuade us of any error on the part of the examiner in rejecting independent claims 1 and 5. We

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thus sustain the rejection of claims 1 and 5, and dependent claims 2-4 and 6-10 which appellant has not argued separately apart from claims 1 and 5¹, as being unpatentable over Deasy in view of Myers.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-10 is REVERSED.

¹ Claims not argued separately apart from a representative claim stand or fall with the representative claim (*see In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); *In re Wood*, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978)).

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a). *See* 37 CFR § 1.136(a)(1)(iv).

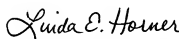
AFFIRMED



MURRIEL E. CRAWFORD
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge



LINDA E. HORNER
Administrative Patent Judge

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